

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEIF SKOOGFORS, an individual,

Plaintiff,

v.

DONALD L. LUSKIN, an individual,

Defendant

CASE NO. 1:13-CV-08775

Judge:

Magistrate Judge:

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff Leif Skoogfors ("Skoogfors"), who states his claims against Donald L. Luskin ("Luskin") as follows:

JURISDICTION AND VENUE

1.

This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§ 1331 (federal question) and 1338(a) (copyright).

2.

This Court has personal jurisdiction over Luskin by virtue of his presence in this District and his transacting, doing, and soliciting business in this District.

3.

Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2) and (c) and 1400(a).

THE PARTIES

4.

Skoogfors is domiciled in the United States, residing in Pennsylvania.

5.

On information and belief, Luskin is domiciled in and a resident of the metropolitan Chicago, Illinois, area.

OPERATIVE FACTS

6.

Skoogfors has worked for more than 45 years as a documentary photographer, photojournalist, and teacher. He has worked as a journalist for media such as the Mutual Broadcasting Company, the BBC, and Radio Zambia. Skoogfors has worked in numerous conflict and disaster zones for Newsweek, Time, Paris Match, and FEMA. His photographs appear in museums, private collections, and publications.

In 1970, Skoogfors attended an anti-war rally in Valley Forge, PA, and took a photograph of attendees, including Jane Fonda and John Kerry, as shown below ("Photograph").



8.

Skoogfors first began offering the Photograph for license through Corbis Corporation in or around 1997.

9.

Skoogfors has complied in all respects with the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as amended, and all other laws and regulations governing copyrights. Therefore, Skoogfors has secured the exclusive rights and privileges in and to the copyrights for the Photograph. The Register of Copyrights for the U.S. Copyright Office issued a Certificate of Copyright Registration for the Photograph, number VA0000863783, with an effective date of November 6, 1997 (shown below).

CERTIFICATE OF REGISTRATION

FORM VA
Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 863-783

NOV 06 1997

Margaret Peters

OFFICIAL SEAL

REGISTER OF COPYRIGHTS

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 CORBIS DIGITAL ONLINE DATABASE MARCH 17 1997
7 Disks of Digital Images

2 a CORBIS CORPORATION

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15195 30th Place, Suite 300
Bellevue, Washington 98007

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The Register of Copyrights for the U.S. Copyright Office issued a Certificate of Copyright Registration for the Photograph, number VA0001781223, with an effective date of July 8, 2011 (shown below).

Certificate of Registration	
 <p>This Certificate issued under the seal of the Copyright Office in accordance with title 17, <i>United States Code</i>, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.</p> <p><i>Maria A. Pallante</i> Register of Copyrights, United States of America</p>	<p>Registration Number VA 1-781-223</p> <p>Effective date of registration: July 8, 2011</p>
Title _____ Title of Work: EF001345, Jane Fonda+John Kerry, anti-war demo	
Completion/Publication _____ Year of Completion: 1970 Date of 1st Publication: November 6, 1997 Nation of 1st Publication: United States	
Author _____ Author: Leif Skoogfors Author Created: photograph(s) Citizen of: United States Domiciled in: United States Year Born: 1940	
Copyright claimant _____ Copyright Claimant: Leif Skoogfors 21 S. Valley Forge Rd., Unit 201, Lansdale, PA, 19446	
Rights and Permissions _____ Name: Leif Skoogfors Email: skoogfors@gmail.com Telephone: 215-855-9470 Address: 21 S. Valley Forge Rd. Unit 201 Lansdale, PA 19446 United States	
Certification _____ Name: Leif Skoogfors Date: July 8, 2011 Applicant's Tracking Number: EF001345	
Correspondence: Yes	

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10.

In January 2012, Skoogfors discovered that Luskin had reproduced and was displaying and distributing the Photograph on Luskin's website at www.poorandstupid.com ("Luskin Website") at http://www.poorandstupid.com/2004_08_29_chronArchive.asp and http://www.poorandstupid.com/images/fonda_ker_vf.jpg , as shown below ("First Use"):



11.

On information and belief, Luskin first reproduced, displayed, and distributed Skoogfors' Photograph on the Luskin Website on Sunday, August 29, 2004.

12.

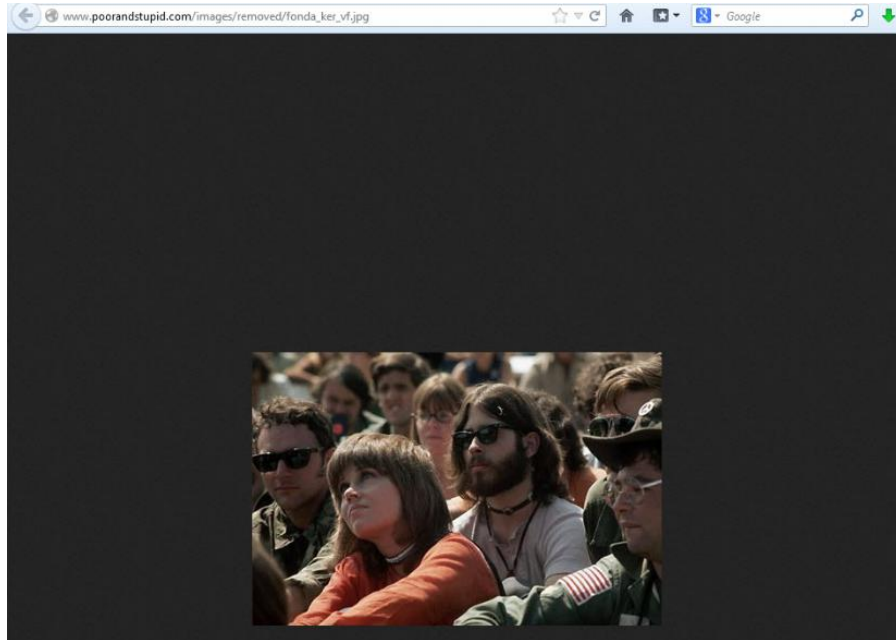
Luskin included no attribution to Skoogfors for the Photograph on the Luskin Website, but posted "Copyright 2002 and 2003 Donald L. Luskin All Rights Reserved" adjacent to the Photograph at http://www.poorandstupid.com/2004_08_29_chronArchive.asp ("Luskin Notice").

13.

Skoogfors contacted Luskin by letter on or about January 6, 2012, to inform Luskin of his infringing use of the Photograph and to demand that Luskin cease all uses of the Photograph.

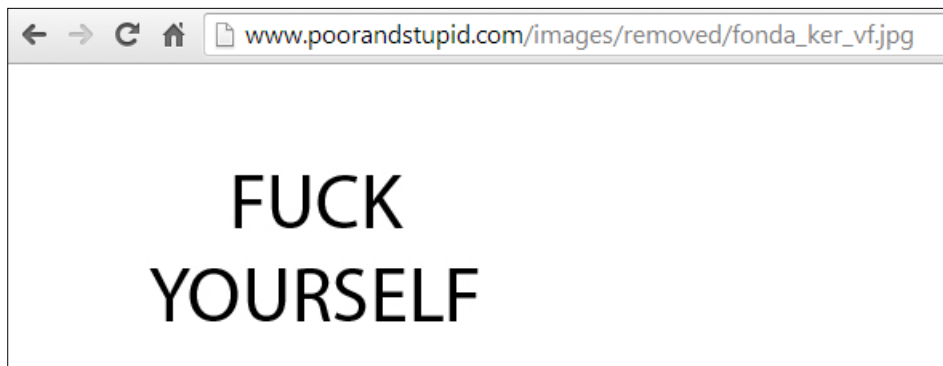
14.

Thereafter, in or around January 2012, Luskin removed the Photograph from the First Use website locations, but then reproduced, displayed, and distributed the Photograph on the Luskin Website at http://www.poorandstupid.com/images/removed/fonda_ker_vf.jpg, as shown below ("Second Use"):



15.

On May 13, 2013, an attorney representing Skoogfors contacted Luskin by email correspondence about the Second Use. Thereafter, in or around May 2013, Luskin replaced the Photograph with the statement, "FUCK YOURSELF," as shown below:



FIRST CAUSE OF ACTION

(Copyright Infringement by Luskin)

16.

Skoogfors re-alleges and incorporates by reference Paragraphs 1 through 15 above.

17.

Luskin reproduced, displayed, and distributed to the public copies of the Photograph without authorization of Skoogfors or the law for the First Use and the Second Use (collectively, the “Infringement”).

18.

Luskin has not compensated Skoogfors for the Infringement.

19.

Skoogfors filed this complaint within the three-year statute of limitations for the Infringement pursuant to 17 U.S.C. § 507(b).

20.

Luskin's conduct violates the exclusive rights belonging to Skoogfors as owner of the copyright for the Photograph, including without limitation, Skoogfors' exclusive rights under 17 U.S.C. § 106.

21.

As a direct and proximate result of its wrongful conduct, Luskin has realized and continues to realize profits and other benefits rightfully belonging to Skoogfors for the copyright to the Photograph. Accordingly, Skoogfors seeks an award of actual damages pursuant to 17 U.S.C. § 504.

22.

In the alternative, as Skoogfors registered the Photograph with the U.S. Copyright Office prior to when the Infringement began, Skoogfors is entitled to and seeks statutory damages for the Infringement, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504 and 505.

23.

The Infringement by Luskin was willful and performed with reckless disregard of or knowledge that the use of the Photograph was unauthorized; Skoogfors is therefore entitled to recover enhanced statutory damages pursuant to 17 U.S.C. 504.

SECOND CAUSE OF ACTION

(Digital Millennium Copyright Act Violation – 17 U.S.C. §§ 1201 *et seq.*

Falsifying Copyright Management Information)

24.

Skoogfors re-alleges and incorporates by reference Paragraphs 1 through 15 above.

25.

The Luskin Notice constitutes copyright management information pursuant to 17 U.S.C. § 1202(c)(1), (2), and (3).

26.

Luskin, without the authority of Skoogfors or the law, knowingly and intentionally induced, enabled, facilitated, and concealed the infringement by providing false copyright management information for the Photograph in violation of 17 U.S.C. § 1202(a).

27.

As a direct and proximate result of Luskin's 1202(a) violation as described above, Skoogfors has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

28.

Specifically, Skoogfors is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2).

29.

In the alternative, Skoogfors is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B) and costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4-5).

PRAYER FOR RELIEF

WHEREFORE, Skoogfors prays for judgment as follows:

1. Declare that Luskin's unauthorized conduct violates Skoogfors' rights under the Federal Copyright Act;
2. Declare that Luskin willfully infringed Skoogfors' rights under the Federal Copyright Act;
3. Declare that Luskin's unauthorized conduct violated Skoogfors' rights under the Digital Millennium Copyright Act;
4. Order Luskin to account to Skoogfors for all gains, profits, and advantages derived from the reproduction, display, and distribution of the Photograph;
5. Order Luskin to pay Skoogfors all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate)

- for Luskin's infringement of the Photograph; alternatively, maximum statutory damages in the amount of \$30,000 for each infringement pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
6. Award Skoogfors maximum statutory damages in the amount of \$150,000 for Luskin's Infringement of Skoogfors' copyrights in the Photograph pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
 7. Award Skoogfors actual damages suffered and profits for each violation of 17 U.S.C. § 1202 (a) pursuant to 17 U.S.C. § 1203(c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
 8. Award Skoogfors maximum statutory damages in the amount of \$25,000 for each violation of 17 U.S.C. § 1202 (a) pursuant to 17 U.S.C. § 1203(c)(3)(B); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
 9. Order Luskin to pay Skoogfors his costs of litigation and reasonable attorneys' fees in this action pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203;
 10. Order Luskin to deliver to Skoogfors all copies of the Photograph and all other materials containing such infringing copies of the Photograph in Luskin's possession, custody or control;
 11. Order Luskin, his agents, and his servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of Skoogfors in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photograph; and

12. Order such other and further relief as this Honorable Court deems just and equitable.

Plaintiff demands a jury trial on all of the foregoing counts.

Respectfully submitted, this 9th day of December, 2013.

_____/s/ Natalie A. Remien_____
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